

**In Re: Upputholla Sreenivasulu**

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**Court :** Andhra Pradesh

**Decided On :** May-22-1957

**Reported in :** 1958CriLJ18

**Judge :** Satyanarayana Raju and; Kumarayya, JJ.

**Appellant :** In Re: Upputholla Sreenivasulu

**Judgement :**

**Kumarayya, J.**

1. This is a reference under Section 374, Cr.PC for confirmation of death sentence passed by the Sessions Judge, Chittoor. The accused, Uppathola Srinivasulu alias Seenugadu has also come In appeal against his conviction under Sections 302 and 201, IPC read with Section 34, IPC and sentence of death and five years rigorous imprisonment passed against him. This judgment will govern both the proceedings.

2. The appellant is one of the six accused who were Jointly tried for having first murdered one Alivelamma of Krishnareddiguaripalli on 10th April, 1956 and then, having caused the disappearance of evidence by burying her dead body in the river bed at Gurralarevu.

3. The prosecution story is that the deceased was a Mala married woman of attractive features but of loose morals. She had illicit connections with several

persons, including A-1 to A-4, For a number of years she was in continuous keeping of A-1 who before his marriage, which took place one year prior to her murder, either used to visit her house or send for her through A-6 (Appellant), his farm servant. He was giving her money, clothes and grain. Her husband was a road cooly and could not get enough for a decent living. He had no control over her. He had, therefore, to reconcile himself with his inevitable lot.

4. The trouble arose, when A-1 was married. Now his visits became infrequent, but the deceased, who largely depended on him for her living would not leave him. She became defiant and, started reminding him of his promises that he would not marry any one and would never leave her. It is said that in order to win him over to her side she even contrived to administer some drug in food curry. A-2 to A-4 being interested in A-1 called upon the deceased just a few days previous to the incident of murder to return the fowl which she had stolen for this purpose from the house of A-1. The deceased retorted and exposed her intimacy with A-1 to A-4.

This flung the first accused in a violent fit of rage and he threatened her that he will crush her to death if she did not return the fowl within a week. Thus it is said that the deceased's determination to cling on to A-1 and the latter's anxiety to get rid of her provided the strongest motive for the murder of the deceased and that A-6 as A-1's farm servant was interested in A-1. Curiously enough, even after the abovementioned incident, A-1 at her request paid the deceased Rs. 10/- for her shandy purchases on Tuesday, After she had returned from the shandy, she slept in her house.

According to the story of the prosecution, on that very night A-6 took her from her house to the .custard apple tree in Yerakayya field about 100 yards away from the village, where A-1 to A-5 were present. A-1 asked her to lie down and had his sexual intercourse with her. They were still in posture when A-1 made signs to the other accused. At this the other accused came from the hiding, caught hold of her neck and killed her by pressing the throat and twisting her neck. Then her dead body was carried to Pincha River bed at Gurralarevu and was buried in the sand.

5. The husband of the deceased, having<sup>1</sup> found his wife missing, reported the matter eventually on 12th April, 1956. The police arrived at the place and on 14th

April, 1956 in the morning arrested the accused No. 6. On the Information given by him, the dead body was recovered from Gurralarevu with her sari, ravika and other things nearby. Then the confessional statement of the accused was got recorded and the charge-sheet was laid after the arrest of the other accused.

6. All the accused denied the charges against them. A-6 went back on his confessional statement and said that it was obtained under the threat and inducement of the police. He denied to have given any information which resulted in the recovery of the dead body.

7. The learned Sessions Judge, after examining 16 witnesses came to the conclusion that the confessional statement was voluntary, that it was true as it was corroborated in material particulars by the other evidence on record and that therefore the accused was guilty of both the offences with which he was charged.

8. It is contended on behalf of the appellant that the confessional statement is not voluntary, that it is not true, and further that the evidence relating to the information given by the accused is inadmissible as it purports to have been given before A-6 (Appellant) was accused of the offence. Reliance in this behalf has been placed on a decision of a Division Bench of this Court reported in *Re Ramaiah A.I.R. 1956 Andhra 56 (A)*. It is also argued that since the recovery under Ex. P-14 appears to have been effected in consequence of subsequent information given by the accused, such recovery cannot in law be relied upon against the accused. The learned Counsel referred us to *In re Krishna Iyer A.I.R. 1935 Mad 479 (B)* and *Lachhman Singh v. The State : 1952 CriLJ863*.

9. Before we consider the question of guilt of the accused, it is necessary to ascertain whether there is clear unequivocal proof of corpus delicti. The dead body was recovered from the Gurralarevu in a mutilated condition. According to the post mortem report, 'the body was denuded free of soft parts except, the back portion, which contains skin and muscles and ligament and tissues in the joints. The skull was bare and that nasal bones were missing. The orbits were empty. The bones of the skull were intact. The skull was separated from the trunk at level of the third cervical vertebra, which was fractured and dislocated. The vertebral column below the third cervical vertebra was intact and attached by soft parts and ligaments.

The back portion of the trunk was covered with skin and muscles which were decomposed. The right upper extremity including the she alder blade was detached from the trunk. The left lower extremity except the foot was attached to the trunk.' The question is whether such a mutilated body and putrefied remains are capable of being or have in fact been identified. The remains recovered not only show that they are all of one human body but given full data of sex, age; stature, general development with certain marks of Identification, and the surrounding circumstances leave no doubt as to its identity.

According to the medical opinion, the skull and skeleton and all the remnants when assembled represented the same body; the skeleton was that of a female whose hA.I.R. was black and long. The age of the female, according to the result of the radiological examination was between 25 and 30 years and the height was 5 ft. and the death appears to have occurred about four days prior to her examination, that is roughly on 10th April, 1956 and the fracture of the vertebra is one of the causes if not the only cause of her death. It also appears from the report that there were two brass bangles in each forearm round the ulna and radius.

Besides these, there are other surrounding circumstances such as the string of black beads and Kasikayulu beads, Savari, two hair pins, the sari of the deceased and the ravika of the deceased which further corroborate the identity of the deceased. Her husband has identified the dead body and also the M.Os, recovered from the place. He has also given the distinctive marks of the skull and the four upper incisors which were a bit protruding. Thus in spite of the fact that the body was mutilated the identity of the deceased has been fully established. The learned Counsel has not advanced any argument against this and in view of the clinching evidence, there could be hardly any room for such argument.

10. Now we turn to the question of guilt. There is no direct evidence in the case. It all turns upon circumstantial evidence. Circumstantial evidence is of great value as it enables us to draw inference as to the existence or non-existence of facts in issue. But the circumstances from which conclusion is drawn must first be fully established. They should be of conclusive nature and tendency and they should

be consistent only with the hypothesis of guilt of the accused; otherwise, the accused will be entitled to the benefit of doubt. To quote the words of Their Lordships in Hanumanth Govind v. State of Madhya Pradesh : 1953 CriLJ129 (D)...there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The circumstances on which the prosecution relies for the conviction of the accused are that (1) the accused was the farm servant of A-I and used to take the deceased to him for sexual intercourse; (2) that the relations between the first accused and the deceased had become strained for sometime; (3) that on the fateful day the appellant had in fact taken the deceased from her house;(4) that P.Ws. 10 and 11 had seen him returning from the scene of burial early in the morning thereafter in association with the other accused(5) that the remains of the deceased with all the surrounding circumstances establishing her Identity were recovered in consequence of the Information given by the accused; and (6) that the accused made a clean breast of the whole matter before the Sub-Magistrate.

11. The evidence with regard to the first three circumstances is strong, cogent and unimpeachable. The testimony of P.Ws. 4 and 7 to 9 clearly establish that A-I had for years illicit connections with the deceased, who now and then used to be sent for through the appellant by A-I to any convenient place and that sometimes he himself would go to her place for the purpose, that the difficulty arose after he got married and that there was an altercation on Friday when A-I roused to fury, threatened her with death in case the fowl was not returned within a week. It is further clear from the depositions of P.W 4 and P.W. 7 that on 10th April, 1956 in the night, the accused (Appellant) had gone to the deceased's house and took her along with him and that from that date she was missing. No doubt, the first information report does not bear mention of this but having regard to the fact that P.Ws. 4 and 7 reported the matter Immediately after the police had come, this omission is not material.

12. But as regards the fourth circumstance, the evidence is not free from suspicion. At any rate it does not carry conviction to our mind. It is said that the accused was seen coming in company with the other accused in the morning of the Incident. P.W. 10, who deposed so is a shopkeeper and shows his occupation as cooly. He has no lands of his own but deposes that he had gone to his paternal uncle's field on that particular day for directing water baled out. He was not in the field when the accused are said to have been seen by him. He says, he had gone away far from that place and was resting for the time when he could see the accused persons.

This is rather extraordinary. He admits that he knew A-5 and A-6 even previously but amongst the persons identified by him at the time he does not name A-6. Thus apart from the inherent defect in his deposition, his testimony does not help the prosecution. The other witness P-W. 11 belongs to a different village and his testimony does not inspire confidence.

13. The fifth circumstance is very material as it effectively implicates the accused. The prosecution story is that after the arrest on 14-4-56 when he was interrogated the appellant gave information to the Investigating Officer which led to the discovery of the remains of the deceased with all identifiable material objects. The place where it was discovered is a pit in the sand mound which is an unfrequented place in the sense that the people do not go to the place usually and the skeleton recovered could not be seen unless one went to the spot. It is not the case of the accused that he got information from some person which he passed on to the police or that he casually went to the spot when he found the dead body there.

The information is specific that the dead body was removed to the mound and buried there and some of the objects were thrown nearby. The entire discovery was the consequence of this information. It cannot but be presumed that the place of the secret disposal was within the personal knowledge of the appellant and that he participated in the act. The inference from the facts can only be this and cannot be extended further so as to connect him with actual murder unless there are further circumstances leading to that inference. The reasoning in *Sher Mohamed*

v. Emperor, 46 Cri LJ 407: A.I.R. 1945 Lah 27 (E), adopted by the Court below leads to the same inference. As a matter of fact that is the inference of the Court below as well.

14. The appellant first of all contended that he did not give the information, nor did he take the police to the place but the police itself had taken him there. But this is negatived by the sworn testimony of P.W. 13 and P.W. 15 which is categorical and which we see no reason to disbelieve.

15. Then it is argued that since the report dated 12th April, 1956 and Ex. P-18, F.I.R., based thereon do not show the appellant as the accused and his name as such appears for the first time in Ex. P-19 i.e. F.I.R., issued on 14th April, 1956 at 9 A.M. after the recoveries were effected under Exs. P-10 to P-12, the appellant though in arrest at the time the information was given' his information is not relevant under Section 27, Indian Evidence Act as he was not the accused at the time. We agree that Section 27, Indian Evidence Act has application only when inter alia both the above-stated conditions are fulfilled namely that the person giving the information must not only be in the custody of the Police Officer but also be a person accused of the offence.

But we are not prepared to accept that the term 'accused' for the purposes of Section 27, I. E. Act can be so narrowly interpreted-as it sought to be done. Of course there is no statutory definition or 'this expression. Yet Its meaning'and implication are too well-known. The expression 'accused of any offence' does postulate firstly an offence committed or alleged to have been committed and secondly accusation of the person or persons therefor. Of course, accusation cannot possibly precede the commission of the offence. But this accusation may emanate from any source and in any manner.

It need not come from the person aggrieved or on his behalf, nor is any writing necessary therefor. The accusation may come even from the offender' himself. The law does not prescribe the mode of accusation nor does it specify the person bringing accusation. It is a mistake to believe that a person cannot be the accused unless his name appears in the F.I.R. The provisions of the Criminal Procedure Code lay down no such stipulation. All that is required for purpose of Section 154,

Cr, P. C, is that there should be clear, definite information about the commission of a cognizable offence to set the investigation machinery in motion. Investigation shall be taken up under the provisions of Section 157, Cr IPC, even if there is reason for the police officer in charge of the station to suspect the commission of a cognizable offence, whether on the basis of such information or otherwise.

Further the information required under Section 154, Cr IPC need not contain the circumstances of the commission of the offence nor the names of the offenders or the witnesses, for the main purpose of investigation is to ascertain these matters. Thus from the time of the commission of offence whoever are shown or have come to the knowledge of the police as offenders or suspected offenders are indeed the accused persons in law though it may be that these persons after arrest are released on security bonds during investigation under the provisions of Section 169 or Section 170, Cri, P.C. That is the position under the provisions of the Code.

16. In the instant case, of course, the appellant has not been named in the report (Ex, P-7 or P-18) but, as observed above, that is not at all essential for purposes of Section 154, Cri. P, C. It is evident that on the basis of this information P.W. 15 having suspected commission of a cognisable offence reached the spot on 12-4-1956 and examined P.Ws. 4, 7 to 9 and 13 that very day. P.Ws. 4 and 7 are the persons who directly implicate the appellant as the person who had taken the deceased from the house in the dark night and P.Ws. 8 and 9 are the witnesses as to the threats of death offered to the deceased by A-I, (the master of A-6) on Friday, a few days prior to the incident. P.W. 15 categorically states that he thereafter searched for the accused. They were absconding.

However, he contacted the appellant near the tank on 14-4-1956 at 6 A.M. and arrested him. Thereafter he interrogated him and he gave the information leading to the discovery. Thus It Is clear that after ascertaining the complicity of the appellant, P.W. 15 arrested him. The person thus arrested during investigation is indeed an accused person within the meaning of Sections 167 and 169, Cr IPC whether he be forwarded to the Magistrate or not. Thus obviously the appellant was the accused person in the custody of the police at the time he gave



information leading to discovery. There is no reason why this information should be disregarded. The Lahore cases relied on are distinguishable. *Jalla v. Emperor* A.I.R. 1931 Lah 278 (F), was a case where the police on suspicion caused the presence of one of the accused, who on being interrogated gave information resulting in the discovery of the dead body.

The learned Judge observed that the evidence of police officers on record did not show how Jalla and others came to be suspected and the explanation of P.W. 6 in that behalf did not find support from P.W. 5, who disclaimed all information. Thus it was held that the person was not accused till after the recovery of the body. *Chetu v. Emperor* A.I.R. 194S Lah 69 (G), is a case where the information was given as to the hidden bomb and cartridges by a person against whom there was no accusation from any quarter and who did not accuse himself either, though, of course, at the time of rediscovery he was the accused.

There could, therefore, be no occasion for the application of Section 27, I. E Act. In *Deonandan v. Emperor*. A.I.R. 1928 Pat 491 (H), which has been overruled by the Pull Bench decision in *santokhi Beldar v. Emperor*. A.I.R. 1933 Pat 149(1), the crime itself was unknown when Deonandan made his confession or gave information leading to discovery of the body of his wife and some other objects and apart from the accusation of Deonandan himself, which was part and parcel of his information there was no accusation from any quarter. It was therefore held that the person was not accused of an offence at the time he gave information or made confession. The facts in A.I.R. 1956 Andhra 56 (A), too are different from the present case.

The F.I.R. which named the culprits did not show the name of A-3. P.Ws. 1 to 5, who were interrogated by the police before A-3 was brought under the custody, were not aware of his complicity. It could not be ascertained how the accused came to be suspected by the Police. It was only after he gave the information leading to discovery and the recovery was effected, that his name was introduced in Ex. P-12 with consequent alteration of the charge. It was therefore held that A-3 was not the person accused at the time the information was given by him. It is further significant to note that the discovery made therein was not in full accord

with his information as embodied in Ex. P-7.

While it was said that the body was buried in a pit the remains were found some 5 miles away in some hills. Thus evidently the facts of the case did not comply with the material ingredients of Section 27, I, E. Act. Above all the whole evidence was extremely doubtful and could not inspire confidence. Thus this case does not help the contention of the learned Counsel, We agree that in order to attract the provisions of Section 27, I, E. Act, the facts must beyond controversy satisfy all the conditions, one of which is that the person must at the time be a person accused of any offence; but we cannot accept that his name must necessarily be found in the F.I.R.

It all depends Upon the facts and circumstances of each case and on the facts of the present case we are convinced that the appellant was already the person accused of the offence by the time he gave information leading to discovery and his information is admissible under Section 27 of the Evidence Act.

17. There is yet another circumstance which connects the accused with the offence. This is the discovery of Thali, which was round the neck of Alivelamma before she died, and also of bamboo stick, at the instance of the accused. The information was given and discovery was made at the time when the appellant was admittedly the accused person. Nevertheless it is contended that as the recovery was made In consequence of information purporting to have been given subsequent to the previous information, it is Inadmissible in evidence. There seems to be no warrant for such proposition.

The cases relied on viz. A.I.R. 1935 Mad 479 (B) and : 1952 CriLJ863 , do not help his contention for they apply to cases where the first information given by the accused was already acted upon with the result that a thing once discovered cannot in law be rediscovered by the same or similar information. In our opinion the recovery of Thali connects the accused with the offence.

18. Now the last circumstance that is for consideration is his confession. This confession as established by the prosecution is voluntary. Sufficient time for reflection and due warning to the accused were given by the Magistrate, who

recorded his statement. The Magistrate has vouched for the same and also for the voluntary nature of the statement. But evidently the accused resiled from the confession at the earliest possible opportunity thereafter. He has stated that he tell a victim to the threats and promises of the police. Though his explanation in this regard has not been quite consistent at various stages of the case, yet the fact remains that a retracted confession to be acted upon must require independent corroboration in material particulars.

It is worthy of note that the confessional statement as it stands does not involve the accused in an offence under Section 302 read with Section 34, I.F.C., for it does not appear that the appellant was aware of the conspiracy or of Intention of murder-Ing the deceased. According to the prosecution story it was usual with him to take the deceased to A-I whenever required for sexual intercourse. This time he took her to the custard apple tree in the field as directed. As is but natural, he was in the hiding as the act started. So, were the other accused. There was nothing unusual therein. When A-I beckoned, it was his duty to go to him and so lie did. All the others rushed to the place and caught hold of the deceased.

When the appellant saw that one of them was pressing the throat and the other winding the saree round her neck and tightening it round the same, he stood aghast and exclaimed why Were they doing all this. This convincingly indicates the he was not aware of the intention of the accused from before and was certainly taken by surprise. That was the situation for which he was not prepared and evidently he did not share their intention. He was rebuked and called by bad name. For fear, he had to catch hold of her legs. Thereafter, as she died of the criminal acts of the other accused, he had to participate in the removal and secreting of the body. Thus it is clear that in view of the confessional statement the accused cannot be imputed with the intention of causing death nor can it be said that by any act of his he killed the deceased.

His assistance, if any, was not intended to cause death nor was it material. It is well-settled that a confession must always be considered as a whole. It should be considered and judged in conjunction with the exculpatory statements found therein and not detached therefrom. Judged in this manner, there can be no

warrant for the conclusion that the accused is guilty of murder according to his own confession. The only offence in which his confession would involve him is the offence under Section 201, I.P.C., and the circumstantial evidence adduced, as discussed above, would raise an inference against him only to that extent. Thus, in our opinion, the appellant is entitled to acquittal in so far as the offence under Section 302, I.P.C., is concerned, but is liable to conviction for the offence under Section 201, I.P.C.

But before we hold so, we have to answer a further question relating to the propriety and legality of such conviction. It may be noted that the appellant was charged with Section 201 read with Section 34, I.P.C., and he was convicted accordingly. All his co-accused who were similarly charged have been acquitted.

19. The question, therefore, is whether the acquittal of the co-accused would warrant his acquittal as well. The answer to this is that it would be so only if there is no independent and sufficient evidence against him. It must be remembered that, though the part played by him in relation to the murder is insufficient and though he might not have shared the common intention of murder as is clear from his confession and the above discussion, the same cannot be said about the part played by him in connection with the offence under Section 201, I.P.C. He carried the dead body and put mud in the pit. He was undoubtedly interested in trying to screen A-1 or himself from legal punishment. His acts of causing disappearance of evidence was no doubt directed for that purpose. Section 201 does apply when any evidence of the commission of the offence is thus caused to disappear with the intention mentioned in that section. The stress is on 'any evidence'. So, any person, who has taken part in causing any evidence of the commission of the offence to disappear will be liable under the section. His confession, therefore, supported by the circumstantial evidence on record, is sufficient to establish his guilt under Section 201, IPC without even invoking the aid of Section 34, Indian Penal Code. Of course, no alternative charge under Section 201 was framed. Nevertheless conviction under that Section is permissible in law.

In this view, we are supported by the authority in *W. Stanley v. State Of M. P.* : 1956 CriLJ291 . In *Wasim Khan v. State of U. P.* : 1956 CriLJ790 , it was held that even if there was no suggestion that the charge was under Section 34, I.P.C, or that the act is committed in furtherance of common intention, the conviction could be passed under Section 302 read with Section 34, I.P.C., or under Section 302, I.P.C., as the evidence would justify. Thus, the omission to frame alternative charge does not become material when the evidence on record is sufficient. Therefore, the conviction of the accused under Section 201 must prevail.

20. Now, the only question is that of sentence. As is evident from the record, he has no motive against the deceased. As a matter of fact, he does not appear to have imagined that she will be thus killed. However, he had participated in the removal and secreting of the body, fully conscious of the criminal nature of his act. His unwillingness, if there was any, did not make itself felt. Nevertheless we see sufficient extenuating circumstances which call for a lighter sentence. The Court below has awarded a sentence of 5 years. Section 201 I.P.C., warrants levy of fine, besides.

It will serve the ends of justice if the accused is sentenced, to 3 years' rigorous imprisonment and a fine of Rs. 30/- and in default one month's further rigorous imprisonment. The conviction will be under Section 201, I.P.C., we order accordingly, and acquit the accused of the offence under Section 302 read with Section 34, I.P.C. Subject to this, the appeal is dismissed.

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